

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 26, 2008

STATE OF TENNESSEE v. JOHN WILLIAM GAY

Direct Appeal from the Criminal Court for Bradley County
No. M-06-469 Amy A. Reedy, Judge

No. E2007-02466-CCA-R3-CD - Filed November 6, 2008

The defendant, John William Gay, was convicted by a jury of reckless endangerment with a deadly weapon, a Class E felony, attempted aggravated arson, a Class B felony, and two counts of reckless aggravated assault, Class D felonies. The defendant was sentenced to two years for his reckless endangerment conviction, nine years for his attempted aggravated arson conviction, and four years for each reckless aggravated assault conviction. His sentences were ordered to run concurrently for a total effective sentence of nine years. On appeal, the defendant argues that there was insufficient evidence to sustain his conviction for attempted aggravated arson. Following our review of the parties' briefs, the record, and the applicable law, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Richard Hughes, Public Defender, and Larry Wright, Assistant Public Defender, Cleveland, Tennessee, for the appellant, John William Gay.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; R. Steven Bebb, District Attorney General; and John O. Williams and Stephen Monte Hatchett, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. BACKGROUND

Sherry Green testified that on August 5, 2006, she was leaving the parking lot of the Smoke Shop and Deli in Cleveland, Tennessee with her two sons, Kenneth Green and Michael Buttrey, when Kenneth told her to turn the car around. She made a U-turn and went back to the store. As she pulled to the curb in front of the store, she saw the defendant spraying Mr. Nalin Patel, the store owner, with a liquid that looked like lighter fluid. Her sons jumped out to help Mr. Patel. Kenneth and Mr. Patel struggled to remove the defendant from the store. The defendant sprayed both men

with lighter fluid and attempted to strike the lighter before he was knocked to the ground unconscious.

On cross-examination, Ms. Green stated that her sons went into the store prior to the incident to purchase a carton of cigarettes. According to Ms. Green, both sons got out of her car to assist Mr. Patel while she remained in the car. When she pulled up to the curb, she saw Mr. Patel standing outside the store asking the defendant, who was inside, to come out. Ms. Green recalled seeing the defendant strike his cigarette lighter inside the store. At that point, Mr. Patel grabbed the defendant's hands and forcibly removed him from the store. Kenneth pushed the defendant down to the ground. The defendant got up again and sprayed Kenneth with lighter fluid. Kenneth knocked the defendant down a second time. The defendant hit his head on the ground and was knocked unconscious. Mr. Patel waited with the two brothers for police and medical personnel to arrive.

Nalin Patel testified that he was the owner and operator of the Smoke Shop and Deli in Cleveland, Tennessee. According to Mr. Patel, the defendant had been a regular customer since the store's opening three years prior to the incident. The defendant liked to play the lottery and frequently purchased tickets. A few days prior to the attack, the defendant had played the lottery and lost approximately \$200.

Mr. Patel testified that on August 5, 2006, the defendant came into the store at around 6:30 or 7:30 p.m. There were two or three other customers in the store. The defendant greeted Mr. Patel and told him he would wait until the other customers left. After ushering the other customers out of the store, the defendant opened his briefcase and took out a bottle of liquid. The defendant told Mr. Patel that it was bug spray. He sprayed liquid from the bottle all over the counter, the display, and all over Mr. Patel. Mr. Patel expressed his outrage and asked the defendant, "Why are you spraying all that? What are you doing, John?" The defendant told Mr. Patel that he was "blowing this place away." The defendant said that he lost money and was going to get his money back. When the defendant tried to strike the lighter, Mr. Patel grabbed the defendant's hands and attempted to pull him outside the store.

On cross-examination, Mr. Patel testified that the defendant was a regular customer who came to the store at least three times a week. The defendant frequently bought beer, cigarettes, and lottery tickets. Mr. Patel stated that before the defendant pulled out the lighter fluid, he had already decided he would not sell the defendant any beer because he was noticeably intoxicated. Mr. Patel recalled that on at least one other occasion, the defendant came to the store intoxicated. Mr. Patel acknowledged that nothing was set on fire after the defendant sprayed lighter fluid all over the store. Mr. Patel admitted that the defendant did not try to prevent him from leaving the store. However, when the defendant tried to ignite the lighter, Mr. Patel grabbed the defendant's arms and dragged him outside. The defendant was attempting to re-enter the store when Kenneth Green and Michael Buttrey arrived and subdued the defendant.

On re-direct examination, Mr. Patel reiterated that the defendant sprayed fluid all over his shirt and approached him with the lighter. Mr. Patel stated that he was concerned about the store because he carried a large number of cigarettes which made the store highly flammable.

Kenneth Green testified that on August 5, 2006, he went to the Smoke Shop with his mother, Sherry Green, and his brother, Michael Buttrey. As he, his brother, and his mother prepared to leave the store, he noticed the defendant spraying the owner and the store with liquid from a bottle. His suspicions had been aroused moments before when the defendant pushed the other patrons out of the store. Mr. Green stated that the defendant also appeared suspicious because he was wearing shorts, a tee-shirt, sunglasses, and carrying a briefcase. After telling his mother to turn her car around, he and his brother jumped out of the car to help Mr. Patel. Mr. Green called to the defendant inside the store and asked him to stop. When the defendant began striking the lighter, he and Mr. Patel went inside and dragged the defendant outside to keep him from setting the store on fire.

Mr. Green testified that the defendant tried to fight the three men once outside. The defendant sprayed Mr. Buttrey with lighter fluid. Mr. Buttrey hit the defendant and knocked him down on his knees. When the defendant got up again, he sprayed lighter fluid on Mr. Green and tried to ignite him with the cigarette lighter. Mr. Green pushed the defendant, causing him to fall backward. The defendant hit his head on the pavement and lost consciousness. Mr. Patel called police who arrived as the defendant regained consciousness. Mr. Green identified photographs taken of his clothing which showed his shirt and shorts covered in lighter fluid.

Michael Buttrey testified that he went to the Smoke Shop on August 5, 2006, with his mother and younger brother to get a carton of cigarettes. Mr. Buttrey identified the defendant as the man he saw spraying lighter fluid all over Mr. Patel and his store. He and his brother got out of his mother's car and went back to the Smoke Shop to help Mr. Patel. According to Mr. Buttrey, after the men got the defendant outside, he sprayed Mr. Buttrey in the face and on his shirt with lighter fluid and attempted to light him on fire.

On cross-examination, Mr. Buttrey acknowledged that the defendant may have sprayed lighter fluid at the men in order to get back into the store. Mr. Buttrey stated that he injured his hand when he hit the defendant. After his brother subdued the defendant, the two men stayed at the scene with Mr. Patel and made statements to police.

Robert Harbison testified that he was a Detective with the Cleveland Police Department when he was dispatched to the Smoke Shop and Deli on August 5, 2006. After quickly inspecting the scene, Detective Harbison went to the hospital to interview the defendant. He recorded his conversation with the defendant which he described as an "information interview." Detective Harbison did not place the defendant into custody at that time. Detective Harbison noted that the defendant smelled of alcohol and seemed intoxicated. However, Detective Harbison stated that the defendant was able to understand and respond to his questions.

A recording of the interview with the defendant was played for the jury. During the interview, the defendant acknowledged that he was angry when he went to the store on August 5, 2006. He stated that he was going to set Mr. Patel's store on fire because he was upset "about everything, his attitude, everything." The defendant admitted losing \$200 on scratch-off lottery tickets the week before. He also admitted that he was upset because he believed that Mr. Patel overdrew his bank account, causing it to close. The defendant stated that his plan was to burn down the store using lighter fluid and a cigarette lighter. The defendant admitted going to the store with

lighter fluid in his briefcase. He then waited for all of the other customers in the store to leave. The defendant told Detective Harbison that after the customers left, “I just started spraying that shit around, you know, and I was squirting it out of the bottle.” The defendant could not recall if he squirted Mr. Patel, Mr. Green, or Mr. Buttrey. The defendant stated that he did not intend to harm Mr. Patel, and “all Nick had to do was run out the door if I set the place on fire.” He further admitted that he confronted Mr. Patel instead of burning his store late at night because he wanted Mr. Patel to know that he was angry with him.

On cross-examination, Detective Harbison testified that he interviewed the defendant in the Emergency Room at the hospital. He acknowledged that the defendant was unaware that the interview was being recorded. Detective Harbison acknowledged that the defendant told him he had been taking pills and drinking beer and appeared to be under the influence of alcohol at the time of the interview. Detective Harbison said he was unaware that the defendant had any psychiatric problems when he conducted the interview at the hospital.

Based on the evidence, the defendant was convicted by a jury of reckless endangerment with a deadly weapon, a Class E felony, attempted aggravated arson, a Class B felony, and two counts of reckless aggravated assault, Class D felonies. The trial court ordered that the defendant’s sentences run concurrent. The defendant received a total effective sentence of nine years. The court denied the defendant’s motion for new trial. The defendant filed a timely notice of appeal.

II. ANALYSIS

On appeal, the defendant argues that the evidence was insufficient to sustain his conviction for attempted aggravated arson.

Upon review, we recognize the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to the appellate court why the evidence will not support the jury’s verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no “rational trier of fact” could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); *see also* Tenn. R. App. P. 13(e). The jury’s verdict, once approved by the trial judge, accredits the state’s witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value given to the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

Arson is defined as follows:

(a) A person commits an offense who knowingly damages any structure by means of a fire or explosion:

(1) Without the consent of all persons who have a possessory, proprietary or security interest therein; or

(2) With intent to destroy or damage any structure to collect insurance for the damage or destruction or for any unlawful purpose.

Tenn. Code Ann. §39-14-301. A person commits aggravated arson, “who commits arson as defined in § 39- 14-301 or § 39-14-303: (1) When one (1) or more persons are present therein . . .” Tenn. Code Ann. §39-14-302(1). Criminal attempt is statutorily defined as follows:

(a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:

(1) Intentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the conduct were as the person believes them to be;

(2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person’s part; or

(3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Tenn. Code Ann. § 39-12-101. Aggravated arson is a Class A felony. Attempted aggravated arson is a Class B felony, and carries a possible sentence length of between eight and twelve years for a Range I, standard offender.

Viewing the evidence in a light most favorable to the state, we conclude that the evidence was sufficient to support the defendant’s conviction for attempted aggravated arson. The record reflects that the defendant walked into the Smoke Shop and Deli with a briefcase containing a bottle of lighter fluid and a cigarette lighter. The defendant does not dispute that he sprayed Mr. Patel, Mr. Green, Mr. Buttrey, and the store with lighter fluid. The record also reflects that the defendant attempted to ignite the lighter fluid while he was inside the store with Mr. Patel. Attempting to set the store on fire while Mr. Patel was inside is evidence of an attempt to commit aggravated arson. *See* Tenn. Code Ann. §39-14-302(1). Additionally, Mr. Patel, Mr. Green, and Mr. Buttrey testified that the defendant sprayed them with lighter fluid, and attempted to ignite the lighter fluid both inside and outside the store. Furthermore, the defendant made a statement to Detective Harbison in which he admitted his intent to set the store on fire. Accordingly, we conclude that there was sufficient evidence to convict the defendant of attempted aggravated arson. The defendant is not entitled to relief as to this issue.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the trial court.

J.C. McLIN, JUDGE